IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 714 OF 2004.

Office Notes, Office Memorandum of Coram, appearnaces, Court's orders or directions and Registrar's orders	Court's or Judge's Orders

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Mr. R.G. Ketkar, for Appellant.

CORAM : A.S. OKA, J.
DATE : 14TH AUGUST 2006.

P.C. :

1. Heard Mr. Ketkar, for the Appellants. Appellants are original plaintiffs.

2. The suit is filed by the Appellants – Plaintiffs for redemption of alleged mortgage executed by a document dated 27th August 1963. The suit was dismissed by the Trial Court and the decree passed by the Trial Court has been confirmed in Appeal.

3. Shri Ketkar appearing for the Appellants placed reliance on decision of the Apex Court in the case of B.W. Jadhav (deceased) & ors. V/s. Narayan Agarwal (deceased) & Ors. (A.I.R. 1960 S.C. Page 3017).

4. In the present case, admittedly, the case made out by the Appellants was that transaction was in the nature of mortgage by conditional sale which is covered by clause (c) of Section 58 of the Transfer of Property Act, 1882. Admittedly, in the document itself, a condition has not been incorporated which stipulated execution of re-convenyance or re-transfer. In view of this position, the document relied upon by the Appellants can not be a document creating a mortgage by condtitional sale. As there is no compliance with the mandatory requirement of proviso to clause (c) of Section 58 of the said Act of 1982, the document cannot be held to be creating a mortgage by conditional sale on the basis of attending circumstances.

5. There is no error in the view taken by the Court. Second Appeal dismissed.

JUDGE